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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/757,135	01/14/2004	Dale Christopher Miller	54568/296994	3827

7590

11/01/2005

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EXAMINER

MANIWANG, JOSEPH R

ART UNIT	PAPER NUMBER
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2144

DATE MAILED: 11/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/757,135	Applicant(s) MILLER, DALE CHRISTOPHER	
	Examiner Joseph R. Maniwang	Art Unit 2144	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 May 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claim 20 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

3. Regarding claim 20, "A computer readable medium on which is encoded a program code, the program code comprising: program code...; program code...; and program code..." would normally be considered statutory unless the specification defines "computer readable medium" as including intangible media such as signals, carrier waves, transmissions, optical waves, transmission media or other media incapable of being touched or perceived absent the tangible medium through which they are conveyed. In this case, the Specification defines "computer readable media" as a wireless transmission channel, and therefore is intangible and non-statutory (see Specification, p. 13, lines 13-15).

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent

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granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 7-17 are rejected under 35 U.S.C. 102(e) as being anticipated by Flender et al. (U.S. Pat. App. Pub. 2003/0204437), hereinafter referred to as Flender.

6. Regarding claims 7, 12, and 15, Flender disclosed a system comprising a host computing device capable of interacting with a wireless network (see paragraph [0015]); and at least one client device capable of interacting with a wireless network (see paragraphs [0016], [0035], [0039]); wherein the host computing device and the client device exchange data via a wireless network and the data comprises at least one datum relating to at least one of the following: patient satisfaction, a patient diary, patient recruitment, and/or activity compliance (see paragraph [0026]); a market survey and/or customer satisfaction with a good or service (see paragraph [0032]); at least one datum relating to a poll (see paragraphs [0007], [0017]).

7. Regarding claims 8, 13, and 16, Flender disclosed the system wherein the data is collected via a survey (see paragraphs [0005], [0007], [0017], [0032]).

8. Regarding claims 9, 14, and 17, Flender disclosed the system wherein the survey is provided on the client device and the data is collected by the host computing device through the wireless network (see paragraph [0016]).

9. Regarding claim 10, Flender disclosed the system wherein the wireless network comprises the internet (see paragraph [0016]).

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10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 1-6 and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Flender et al. (U.S. Pat. App. Pub. 2003/0204437), hereinafter referred to as Flender, and further in view of Leveque et al. (U.S. Pat. App. Pub. 2002/0128860), hereinafter referred to as Leveque.

12. Flender disclosed a system comprising a host computing device capable of interacting with a wireless network (see paragraph [0015]); and at least one client device capable of interacting with a wireless network (see paragraphs [0016], [0035], [0039]); wherein the host computing device and the client device exchange data via a wireless network (see paragraph [0017]). Flender disclosed the data comprising at least one datum relating to at least one of the following: a market survey and/or customer satisfaction with a good or service (see paragraph [0032]); or at least one datum relating to a poll (see paragraphs [0007], [0017]). Flender further disclosed the system wherein the data is collected via a survey (see paragraphs [0005], [0016], [0017]).

13. While Flender disclosed exchanging data comprising a market survey, customer satisfaction with a good or service, or at least one datum relating to a poll, Flender did not specifically disclose exchanging data comprising at least one datum relating to a clinical trial.

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14. In a related art of data management and collection, Leveque disclosed a system similar to Flender which involved collecting survey data electronically through the Internet via the transmission of e-mail messages (see paragraph [0044]). Most importantly, Leveque disclosed transmitting survey data relating to a clinical trial as claimed (see paragraphs [0044], [0046], [0049], [0066]).

15. It would have been obvious to one of ordinary skill in the art at the time of invention to combine the teachings of Flender and Leveque to provide a system for exchanging survey data through the Internet between a wireless client and host via e-mail, the data comprising data relating to a clinical trial as claimed, as the transmission of clinical trial data in such a manner was well-known in the art. One of ordinary skill would have been motivated to combine the teachings as both sought to improve the way in which survey data was processed. Leveque provided a way to aggregate complex survey data (see paragraphs [0006]-[0024]), a feature desirable in Flender regarding timely evaluation of survey data (see paragraph [0006]).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Flender et al. (U.S. Pat. App. Pub. 2003/0204436)

Brown et al. (U.S. Pat. App. Pub. 2003/0069899)

Torres et al. (U.S. Pat. App. Pub. 2002/0004757)

Kupersmit (U.S. Pat. App. Pub. 2002/0016731)

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Satoh et al. (U.S. Pat. App. Pub. 2003/0055686)

Stein et al. (U.S. Pat. No. 6,289,212)

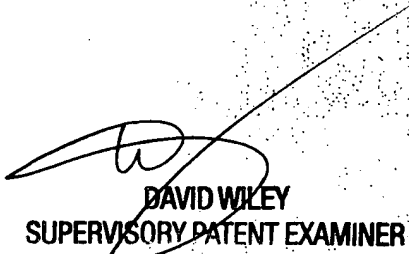
Mintz (U.S. Pat. App. Pub. 2001/0031454)

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph R. Maniwang whose telephone number is (571) 272-3928. The examiner can normally be reached on Mon-Fri 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A. Wiley can be reached on (571) 272-3923. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JM


DAVID WILEY
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100